MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2022/2023 SESSION (TERM ID 2210)

UCV4622 – CIVIL PROCEDURE II

(All Sections / Groups)

10 FEBRUARY 2023
Reading Time: 09:00am –09:15am
(15 Minutes)
Answering Time: 09:15am –12:15pm
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 5 Questions only.

3. This paper consists of two parts. **PART A** is **COMPULSORY. PART B to attempt either question 4A or 4B.** The distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

PART A: COMPULSORY

QUESTION 1

(a) The Statement of Claim from the Plaintiff is reproduced as follows:-

Statement of Claim

1. The Plaintiff is an individual and resides at No. 10, Jalan Panglima Awang, Taman Megah, 75200 Melaka.
2. The 1st Defendant at all material times provided hospital services and maintained the Ozani Hospital at No.1-2, Jalan KFG, 75200 Melaka ("the hospital).
3. The 2nd Defendant at all material times is a qualified specialist surgeon carrying out his practice at the Hospital. The 2nd Defendant was at all times a servant and/or agent and/or employee of the 1st Defendant's hospital.
4. On 9.5.2021, the Plaintiff referred to the 1st Defendant for consultation and treatment of *AA disease.*
5. The 2nd Defendant proposed to the Plaintiff to undergo a surgery known as *"AA cure disease"*.
6. On 9.6.2021, the Plaintiff was admitted to a ward in the 1st Defendant's premises and the procedures was performed on 10.6.2021 by the 2nd Defendant but the surgery was failed to be completed and abandoned.
7. As a result, the Plaintiff lost huge amounts of blood and sustained *BB disease* whereupon another surgery has to be performed.
8. The 2nd Defendant failed to exercise all reasonable care, skill and diligence in his treatment of the Plaintiff.
9. The 1st and 2nd Defendants negligently advised and provided inadequate and/or improper medical treatment to the Plaintiff.

Particulars of negligence of the 1st and 2nd Defendants, particulars of injury, particulars of Special Damages is stated clearly in the Statement of Claim.

And the Plaintiff therefore claims against the Defendants the following:

(a) General Damages;
(b) Exemplary and/or Aggravated Damages;
(c) Special Damages;
(d) Interests;
(e) Costs; and
(f) Such proper and other relief as this Honourable Court deems fit and proper.

Dated 20th day of September, 2022

As a solicitor for the 1st and 2nd Defendants, prepare the proper pleading.

(15 marks)

Continued...

(b) "The principles upon which the court acts in exercising its power under any of the four limbs of Order 18 r 19(1) of the Rules of Court 2012 are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable'."

Analyse the above referred principles.

(10 marks)

(Total: 25 marks)

QUESTION 2

(a) The plaintiff filed a suit against the defendant, to claim for a debt of RM150,000.00 that is owed by the defendant to him. At the hearing date, the plaintiff was absent (without a valid reason). The defendant was present, and the Court listened to the defendant's evidence and later dismissed the plaintiff's claim on the ground that there is no merit to the claim. Plaintiff is dissatisfied with the decision and decide to appeal the matter.

Explain to plaintiff on the Court's decision.

(10 marks)

(b) Elucidate on the differences between striking out a suit and dismissing a suit under Order 35 of the Rules of Court 2012.

(6 marks)

(c) Analyse the procedural rules that allow the Court to expeditiously dispose off a matter, without having to go to trial.

(9 marks)

(Total: 25 marks)

Continued...

QUESTION 3

(a) Compare and contrast between *Mareva Injunction* and *Anton Piller Order*.

(5 marks)

(b) The defendants, a famous garment fashion company and its two directors, were agents of the plaintiff, a textile manufacturer. The plaintiff claimed that the defendants were in secret communication with other textile manufacturers and were giving them confidential information about the plaintiff's manufacturer. The disclosure of which could be most damaging to the plaintiff. In order to prevent the disposal of documents by the defendants, the plaintiff applied an ex parte application for an interim injunction to restrain the defendants from disclosing confidential information and for an order for permission to enter the defendants' premises to inspect all such documents and to remove them into the plaintiff's solicitor's custody.

Explain the plaintiff's application for the interim injunction.

(10 marks)

(c) The plaintiff filed a writ on 25 September 2019 claiming against the defendant, unpaid hire and damages for repudiation of a charter party. The plaintiff then, applied an ex parte application for an injunction restraining the defendant from removing or disposing out of the jurisdiction moneys standing to the credit of the defendant's account in a bank.

Explain the application made by the plaintiff.

(10 marks)

(Total: 25 marks)

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PART B: ANSWER EITHER QUESTION 4A OR QUESTION 4B

QUESTION 4A

A sued B in the Sessions Court at Melaka for defamation. A's suit was dismissed by the Sessions Court Judge with costs to be paid by A to B. A is dissatisfied with the decision and wishes to appeal the matter to the higher court.

Based on the above, answer to A the followings: -

(i) Explain to A the procedure of an appeal of the above matter.

(6 marks)

(ii) The ground of judgment is pending from the Sessions Court. Explain to A on how he would proceed with the Record of Appeal.

(6 marks)

(iii) Explain to A on the content of the Record of Appeal.

(6 marks)

(iv) A informed you that he has few new findings on his case. A seeks your advise in putting the new findings in his appeal.

(7 marks)

(Total: 25 marks)

Continued...

QUESTION 4B

(a) The plaintiff has obtained Judgment in Default of Appearance (JIDA) against the defendant. The JIDA was served to the defendant, however since there is no response from the defendant. The plaintiff intended to take further steps to protect his right.

(i) Explain to the plaintiff three (3) modes of Enforcement of Judgment that are available for her.

(12 marks)

(ii) Explain to the plaintiff shall the plaintiff fail to execute the Judgment within the time limit.

(6 marks)

(c) An appeal does not operate as a stay. Explain the statement.

(7 marks)

(Total: 25 marks)

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